Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of:	)	
BellSouth Corporation	)	RM-11299
Petition for Rulemaking to Change The Distribution Methodology for Shared Local Number Portability and Thousands-Block Number Pooling Costs	)	

COMMENTS OF T-MOBILE USA, INC.

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SUMMARY

The Commission should deny BellSouth's petition to initiate a rulemaking proceeding in order to replace the current revenue-based methodology for distributing among service providers the shared costs of local number portability ("LNP") and thousands-block number pooling ("pooling") with a usage-based methodology. BellSouth claims that the change is necessary because BellSouth and the other ILECs allegedly pay more than their fair share of the shared costs, and a usage-based methodology would create incentives for carriers to use the Number Portability Administration Center ("NPAC") more efficiently.

BellSouth's Petition merely repeats arguments that the Commission fully considered and rejected when it adopted a revenue-based recovery methodology. BellSouth claims that reconsideration of those arguments are appropriate because "changes" allegedly have undermined the Commission's original reasoning. Upon a close reading of the Petition, it becomes apparent that nothing relevant has really changed at all, and the Commission's original conclusions remain equally valid today.

The Petition is based upon BellSouth's misguided view that BellSouth, like the other ILECs, is "absorbing costs for which it receives no benefit." This view of the "benefits" of LNP and pooling is fundamentally inconsistent with the entire regulatory framework the Commission has created for LNP and number pooling. Like all consumers, telecommunications service providers enjoy the benefits of LNP and pooling that the recovery of shared costs enable regardless of whether they are directly involved with specific number ports, including, for example, increased competition, accurate data in the NPAC to ensure proper routing and billing, and better efficiency with respect to numbering optimization, which ensures that numbers will be available for everyone to

use as necessary. Moreover, the consumer who elects to port his or her number, rather than the new or the old service provider, is the cost causer, but requiring consumers directly to bear the full cost of port transactions would create disincentives for consumers to exercise their right to port, which would be fundamentally inconsistent with the Act and the Commission's rules and policies. Once BellSouth's distorted views are corrected, it becomes clear that the current revenue-based methodology remains the most competitively neutral cost allocation structure.

T-Mobile respectfully submits that the change BellSouth requests would create many more problems than it would solve, and that there are much better ways to create incentives for carriers to use the NPAC more efficiently. Specifically, a usage-based mechanism would continue to disadvantage all carriers with less market share than the ILECs, including new entrants, and discourage carriers from engaging in activities that serve the public interest by, among other things, ensuring the accuracy of the NPAC. As such, the current methodology serves the public interest far better than would BellSouth's proposal.

Rather than unnecessarily abandoning the current methodology, the FCC can increase the efficiency with which carriers use the NPAC by improving the intermodal portability process. To the extent the FCC finds that further improvements in efficiency are warranted, the FCC should initiate a rulemaking to determine whether certain NPAC activities should be deemed direct carrier costs for which carriers pay on a usage basis rather than shared costs for which carriers pay pursuant to the current revenue-based methodology. In any event, the FCC should deny BellSouth's Petition and retain the current revenue-based methodology for recovering shared carrier costs.

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COMMENTS OF T-MOBILE USA, INC.

T-Mobile USA, Inc. ("T-Mobile"), by its attorneys, hereby comments on the Petition for Rulemaking ("Petition") filed by BellSouth Corporation ("BellSouth") on November 3, 2005. In the Petition, BellSouth requests the Federal Communications Commission ("FCC" or "Commission") to initiate a rulemaking proceeding in order to change the present methodology for distributing among service providers the shared costs of local number portability ("LNP") and thousands-block number pooling ("pooling"). Specifically, BellSouth requests that the Commission replace the current revenue-based recovery methodology with a usage-based recovery methodology.

T-Mobile respectfully submits that the change BellSouth requests would create many more problems than it would solve, and that there are much better ways to create incentives for carriers to use the Number Portability Administration Center ("NPAC") more efficiently. As such, the current methodology serves the public interest far better than would BellSouth's proposal. Rather than unnecessarily abandoning the current methodology, the FCC can increase the efficiency with which carriers use the NPAC by improving the intermodal portability process. To the extent the FCC finds that further improvements in efficiency are necessary, the FCC should initiate a rulemaking to determine whether certain NPAC activities should be deemed direct carrier costs for which carriers pay on a usage basis rather than shared costs for which carriers pay pursuant to the current revenue-based methodology. In any event, the FCC should deny BellSouth's Petition and retain the current revenue-based methodology for recovering shared carrier costs.

I. THE DISTRIBUTION METHODOLOGY FOR SHARED LNP AND POOLING COSTS SHOULD NOT BE CHANGED

In the Petition, BellSouth correctly notes that the Commission's interpretation of "competitively neutral" was created by the agency itself rather than Congress, and that Congress provided little guidance regarding the meaning of Section 251(e)(2) and the phrase "competitively neutral."[1] T-Mobile agrees with BellSouth that the Commission has full discretion to adopt a different cost distribution methodology that satisfies the relevant statutory mandate.[2] However, T-Mobile disagrees that changes to the distribution methodology are necessary, because the reasons why the Commission initially adopted a revenue-based mechanism rather than a usage-based mechanism remain equally valid today. Specifically, a usage-based mechanism would continue to create obstacles for all carriers with less market share than the ILECs, including new entrants, and discourage carriers from engaging in activities that serve the public interest by ensuring the accuracy of the NPAC.

BellSouth's Petition merely repeats arguments that the Commission fully considered and rejected when it adopted a revenue-based recovery methodology based

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1 BellSouth Petition at 26.

2 *Id.*

upon BellSouth's claim that alleged "changes" have undermined the Commission's original reasoning. Upon a close reading of the Petition, it becomes apparent that nothing relevant has really changed at all, and the Commission's original conclusions remain equally valid today.

A. No Changes Since 1998 Have Rendered The Commission's Findings Regarding the Superiority of the Current Revenue-Based Mechanism Invalid.

BellSouth argues that changed market conditions and years of experience with LNP and number pooling dictate changing the methodology for distributing shared LNP and number pooling costs.[3] BellSouth's argument is false on both grounds.

1. No changes in the marketplace have undermined the FCC's conclusion that a usage-based mechanism would create obstacles for all non-ILEC carriers, including new entrants

Contrary to BellSouth's claim, the market has not matured to the point that the Commission's findings regarding the superiority of a revenue-based mechanism over a usage-based mechanism are no longer valid. In deciding to adopt a revenue-based mechanism, the Commission correctly found that:

> Distributing the shared costs among telecommunications carriers in proportion to database use would shift these costs to telecommunications carriers that win more customers because such carriers will perform more uploads. At the outset of number portability, these carriers are more likely to be competitive LECs. Consequently, usage-sensitive distribution of the shared costs could "*give one service provider an appreciable, incremental cost advantage over another service provider when competing for a specific subscriber*," as well as "*disparately affect the ability of competing service providers to earn a normal return.*"[4]

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3 *Id.* at 2.

4 *See* BellSouth Petition at 16, *citing Telephone Number Portability*, 13 FCC Rcd 11701, 11745, ¶ 88 (1998) (emphasis added) ("*Third Report and Order*").

Under the Commission's reasoning, it is not time in the market that counts, but rather relative market share. Carriers that have a much smaller market share are likely to port far more numbers in than they port out. By contrast, the ILECs are likely to port far more numbers out than they port in. Therefore, BellSouth's emphasis on the fact that CLECs "are no longer 'new entrants'" in making the argument that the market has changed is irrelevant, not to mention inconsistent with BellSouth's reliance on the recent entry of VoIP service providers to argue that the market is competitive, which is equally irrelevant. With respect to this particular argument, market share is the determinative factor.[5]

BellSouth and the other ILECs continue to dominate the market, and, in light of the recent mergers, some of their largest competitors no longer exist. Indeed, the reason why the current revenue-based recovery mechanism "requires BellSouth to pay an overwhelmingly large percentage of shared regional costs"[6] is because BellSouth has an overwhelmingly large percentage of the market share in the region. Ironically, if BellSouth had lost enough market share to competitors that the Commission's original concern about disproportionate impact were no longer valid, BellSouth would not be asking the Commission to abandon the current revenue-based recovery mechanism because the competitive carriers would be paying as much or more of the shared costs as BellSouth.

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5 Under the Commission's reasoning, the relative market share of individual carriers arguably is more important than the market share served by any particular type of telecommunications service provider. For example, even if ILECs controlled only 50% of the market, the Commission's original rational would still be valid because the remaining 50% of the market share would be divided among several different types of competitive and intermodal competitors, each of which would be more likely to port more numbers in than they port out, while the ILECs would still be likely to port more numbers out than they port in.

6 BellSouth Petition at 28.

Although competition has grown since 1998, the fact that CLECs had a market share of 18.5% of end-user switched access lines in 2004 is not evidence that the market is stable and mature, or that the disadvantages to non-ILEC telecommunications service providers caused by a usage-sensitive distribution of shared costs are any less.[7] Indeed, the significant consolidation that the industry has been experiencing over the past few years, which has resulted in the elimination of some of the key non-ILEC competitors, suggests that the FCC's reasons for adopting a revenue-based mechanism are more valid than ever.[8]

Similarly, the fact that "the number of wireless telephone subscribers more than doubled to 181 million between 1999 and 2004" is not evidence that the ILECs have lost significant market share due to intermodal competition or that the disadvantages to non-ILEC telecommunications service providers caused by a usage-sensitive distribution of shared costs are any less.[9] Indeed, only 6% of the households in the United States use cellular service only (as compared to the 51.7% of households that use wireline and cellular services, or the 39% of households that use wireline services only),[10] and of that 6%, not all of the households would subscribe to wireline service if cellular service were

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7 *See id.* at 12, *citing Local Telephone Competition: Status as of December 31, 2004*, Industry Analysis and Technology Division, Wireline Competition Bureau, Table 1 (July 2005) (noting that the CLEC share of end-user switched access lines has climbed from 4.3% in 1999 to 18.5% in 2004).

8 *See, e.g., Verizon Communs. Inc. and MCI, Inc. Applications for Approval of Transfer of Control*, WC Docket No. 0575, Memorandum Opinion and Order, FCC 05-184 at p. 4 (rel. Nov. 17, 2005) (approving Verizon-MCI merger); *SBC Communs. Inc. and AT&T Corp. Applications for Approval of Transfer of Control*, WC Docket No. 05-65, Memorandum Opinion and Order, FCC 05-183 at p. 4 (rel. Nov. 17, 2005) (approving SBC-AT&T merger).

9 BellSouth Petition at 12.

10 *Local Telephone Competition: Status as of December 31, 2004*, Industry Analysis and Technology Division, Wireline Competition Bureau, Table 16.5 (July 2005).

unavailable.[11] T-Mobile competes vigorously with wireline service providers and urges the Commission to improve the intermodal portability process to facilitate further true intermodal competition. However, as the statistics demonstrate, true intermodal competition has yet to develop to the point that the Commission should reconsider its findings regarding the disadvantages that wireless and other non-ILEC telecommunications service providers would suffer under a usage-based recovery mechanism.

The emergence of Voice over Internet Protocol "VoIP" services as potential competition to legacy service offerings confirms the need for a revenue-based mechanism. As "new entrants" with low market share, VoIP service providers, to the extent they are permitted or required to participate in LNP and pooling, will likely port far more numbers in than they port out. As such, if a usage-based mechanism is adopted now, legacy carriers will have "an appreciable, incremental cost advantage" over VoIP providers when competing for subscribers, and thus, the usage-based mechanism will "disparately effect" the ability of VoIP providers "to earn a normal return."[12]

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11 T-Mobile is unaware of any accurate statistics regarding the exact percentage of cellular only households that would subscribe to wireline service if cellular service were unavailable.

12 The hindrance a usage-based mechanism poses to VoIP providers goes against not only the Commission's initial logic for adopting the present cost allocation method, but also against the Commission's well-versed policy not to adopt rules or regulations that might hinder the growth of IP-enabled services. *See, e.g., Vonage Holdings Corp.*, 19 FCC Rcd 22404, ¶ 36 (2004) ("We are also guided by section 706 of the 1996 Act, which directs the Commission (and state commissions with jurisdiction over telecommunications services) to encourage the deployment of advanced telecommunications capability to all Americans by using measures that 'promote competition in the local telecommunications market' and removing 'barriers to infrastructure investment.' Internet-based services such as DigitalVoice are capable of being accessed only via broadband facilities, *i.e.*, advanced telecommunications capabilities under the 1996 Act, thus driving consumer demand for broadband connections, and consequently encouraging more broadband investment and deployment consistent with the goals of section

In light of the recent consolidation in the telecommunications industry and the Commission's increasing reliance on intermodal competition to justify the recent mergers and balance the market power of the ILECs,[13] it is even more important than ever for the Commission to ensure that the cost recovery mechanism does not "disparately effect" the ability of intermodal competitors and new market entrants "to earn a normal return."

2. Nothing about the years of experience with LNP and number pooling suggests that the current recovery mechanism should be abandoned.

BellSouth makes the general unsupported claim that "years of experience with LNP and number pooling dictate changing the methodology for distributing shared LNP and number pooling costs."[14] However, nowhere does BellSouth explain how anything that has occurred since LNP and number pooling were implemented was unexpected or different from the assumptions upon which the Commission based its conclusion that a revenue-based recovery mechanism served the public interest better than a usage-based recovery mechanism would. To the contrary, the statistics BellSouth cites demonstrate that LNP and number pooling have had exactly the results that the Commission expected:

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706. Indeed, the Commission's most recent Fourth Section 706 Report to Congress recognizes the nexus between VoIP services and accomplishing the goals of section 706.").

13 *See, e.g., Verizon Communs. Inc. and MCI, Inc. Applications for Approval of Transfer of Control*, WC Docket No. 0575, Memorandum Opinion and Order, FCC 05-184 at p. 4 (rel. Nov. 17, 2005) (finding that Verizon-MCI merger will not decrease competition in mass market due to "increasingly important role" of intermodal competition); *SBC Communs. Inc. and AT&T Corp. Applications for Approval of Transfer of Control*, WC Docket No. 05-65, Memorandum Opinion and Order, FCC 05-183 at p. 4 (rel. Nov. 17, 2005) (finding same); *Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers*, CC Docket No. 01-338, Order on Remand, FCC 04-290 ¶ 2 (rel. Feb. 4, 2005) (finding that "increasing competition from intermodal sources" has decreased CLEC reliance on ILEC broadband-related facilities for the mass market).

14 BellSouth Petition at 2.

smaller carriers port in more numbers than they port out, and the ILECs port out more numbers than they port in. Moreover, BellSouth's claim that somehow it and the other ILECs benefit less from LNP and number pooling now than they did when the Commission implemented the current revenue-based recovery mechanism is fundamentally flawed because it is based on a false premise, as explained below in Section C.

B. The FCC's Conclusion That a Usage-Based Mechanism Would Create Disincentives To Engage In Activities That Serve The Public Interest Remain Valid Today

BellSouth argues that the Commission's initial concerns are no longer valid because downloads are not a billable transaction, and thus a usage-based recovery mechanism would not create disincentives for carriers to download.[15] As an initial matter, BellSouth mischaracterized the Commission's findings, claiming that the "Commission declined to adopt a usage-based mechanism in 1998 [due to] its concern that carriers would not download broadcast messages in order to avoid incurring charges."[16] Downloading broadcast messages have never been a billable transaction, so nothing has changed since 1998, and this was not the reason why the Commission declined to adopt a usage-based mechanism.

Contrary to BellSouth's misleading characterization, the Commission actually found that usage-sensitive recovery mechanisms are contrary to the public interest because they create disincentives for carriers to engage in activities that serve the public

15 *See, e.g., id.* at 16.

16 *Id.* at 18.

interest and unfairly penalize those who engage in such activities on a more frequent basis. As the Commission explained,

> assessing shared costs on a usage-sensitive basis could discourage carriers from performing uploads and downloads, or at least penalize those carriers that do so more frequently...[U]nless carriers download data, they will be unable to terminate traffic to the appropriate end-user; unless carriers upload ported numbers to the databases, the databases will be inaccurate, making downloads useless for current and future database participants alike.[17]

The Commission was absolutely right. Moreover, the need to ensure accuracy and to avoid penalizing carriers that are engaging in activities that serve the public interest is just as crucial today, and thus the Commission's conclusion that a usage-based recovery mechanism would interfere with those goals remains equally as valid as it was in 1998. BellSouth failed to identify a single reason why the Commission's original findings are no longer true, and thus the Petition must be denied.

C. BellSouth's Argument Is Fundamentally Flawed Because It Is Based on False Assumptions.

BellSouth urges the Commission to abandon the current revenue-based methodology based upon BellSouth's misguided view that it, like the other ILECs, is "absorbing costs for which it receives no benefit."[18] BellSouth's argument is based upon an incorrect view of "benefit" that is fundamentally inconsistent with the entire regulatory framework the Commission has created for LNP and number pooling, as well as an incorrect view of the "cost causer" for porting and pooling transactions. Once BellSouth's distorted views are corrected, it becomes clear that a revenue-based

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17 *Id.* at 16, *quoting Third Report and Order* ¶ 41.

18 BellSouth Petition at 28. BellSouth also claims that the current allocation methodology creates a significant disparity in the costs burdens imposed upon other non-CLEC providers such as BellSouth. *See id* at 18.

methodology is still the most competitively neutral cost allocation structure for today's market.

1. All consumers and carriers benefit from LNP and number pooling.

BellSouth's Petition makes it clear that BellSouth believes it has benefited from LNP and number pooling only when it wins a customer from another carrier and is able to port that customer's number in.[19] In reality, the regulatory framework for LNP and number pooling is based upon the fundamental principle that all carriers, and thus consumers, benefit from portability and pooling, even when the carrier is on the losing end of a specific porting transaction.[20]

Consumers and carriers alike benefit from a competitive market, and LNP fosters competition by making it easier for consumers to switch carriers. Consumers benefit even if they do not choose to exercise their right to port their number to a different carrier, because the mere threat that they could do so in order to take advantage of another carrier's offering creates incentives for the consumer's current carrier to offer the

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19 *See, e.g.,* BellSouth Petition at 31.

20 *See, e.g., Third Report and Order* at ¶ 89 (noting that "all telecommunications carriers that depend on the availability of telephone numbers will benefit from number portability because it allows subscribers to retain their telephone numbers when changing local service providers, and because it facilitates the conservation of telephone numbers through number pooling"); *id.* at ¶ 4 (noting that, "[a]lthough telecommunications carriers, both incumbents and new entrants, must incur costs to implement number portability, the long-term benefits that will follow as number portability gives consumers more competitive options outweighs these costs"); *id.* at ¶ 114 (concluding that "it will be equitable for all telecommunications carriers, *even those without end-user revenues and those not directly involved in number portability*, to contribute toward the costs of the regional databases because all telecommunications carriers will benefit from number portability. Number portability will remove barriers to entry into the market for local service and increase local competition. Number portability will also ameliorate number exhaust concerns by making possible number pooling") (emphasis added).

best service and prices possible. Carriers also benefit from a healthy and competitive market, because the innovative services and equipment that competition fosters typically increases consumer demand and overall market growth. As such, carriers benefit from LNP even if they are not directly involved in every port transaction. Likewise, consumers and carriers benefit from number pooling, which optimizes the efficiency with which numbering resources are used and delays the costs and burdens that accompany area code relief and eventually NANP expansion.[21] Indeed, it is for these reasons that the Commission required wireless carriers to begin contributing to shared LNP and pooling costs four years before they became LNP-capable, and thus, were able to benefit directly from the shared costs they were forced to absorb.[22] The bottom line is that competition and numbering resource optimization provide tremendous benefits to both consumers and carriers alike regardless of their involvement, if any, in specific porting transactions, which is why the public interest is served by requiring carriers collectively to bear shared LNP and pooling costs.

Consistent with these principles, the Commission has defined shared costs as "costs incurred ***by the industry as a whole***, such as those incurred by the third-party administrator to build, operate, and maintain the databases needed to provide number portability."[23] The Commission broke down these costs into three sub-categories:

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[21] T-Mobile notes that the implementation of number pooling preserved the 10 digit NANP, which prevented the Industry from prematurely incurring billions of dollars to implement an 11 or 12 digit NANP.

[22] *See, e.g., id. at* ¶ 114 (requiring wireless carriers to contribute to the recovery of shared number portability costs despite the fact that wireless carriers were not directly involved in number portability at that time).

[23] BellSouth Petition at 7, *citing Third Report and Order* at 11738-39, ¶ 69 (emphasis added).

(a) non-recurring costs, including the development and implementation of the hardware and software for the database;

(b) recurring (periodic) costs, such as rent, utilities, payroll, repair, and replacement that are incurred by the database administrators; and

(c) costs for uploading and downloading.[24]

Interestingly, BellSouth's Petition focuses solely on the last of these categorized shared costs. Although the number of billable transactions for the year is one of the factors used to determine the total annual regional carrier contribution,[25] the billable transactions themselves are not the sole shared cost related to LNP and pooling. The other two cost factors are unrelated to the number of billable transactions for the year. Accordingly, it would be grossly inequitable to distribute all shared costs on a usage basis, particularly in light of the highly detrimental impact such a recovery mechanism would have on competition and accuracy of the NPAC. A revenue-based mechanism simply provides a more competitively neutral approach to carrier LNP shared cost contributions than the usage-based mechanism proposed by BellSouth.

BellSouth's Petition also reads as if BellSouth and the ILECs were the only carriers to experience an increase in shared cost expenses. In reality, all carriers have witnessed their respective shared costs contributions increase as billable transactions have increased over the years. Every billable transaction increases the inevitable pro rata contribution of all LNP-capable providers. BellSouth's charts, as well as the "data" upon which the charts are based, are misleading because they include only billable transactions

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24 *Id.* at 7-8, *citing Third Report and Order* at 11738-39, ¶ 70.

25 NeuStar, the database administrator, calculates the total shared costs for each regional database based upon the total number of billable transactions generated in a particular region. A billable transaction is a LNP or pooling transaction that adds (inserts), deletes (disconnects), or modifies (updates) a record in the relevant database. *See* Bellsouth Petition at 9.

where BellSouth won a customer. Given the overwhelming market dominance by the ILECs, it is hardly surprising that BellSouth ported away far more numbers than it ported in. Nevertheless, the Telecommunications Act of 1996 requires the Commission to foster competition, and LNP and pooling serve the public interest by fostering competition and efficient numbering utilization, which benefits all consumers and carriers, including those like BellSouth that port out more numbers than they port in. Moreover, BellSouth and the other ILECs earn far more revenue from their overwhelming market share than any other carrier, and thus they benefit more from a healthy telecommunications market than any other carrier. Accordingly, no disproportionate burden is placed on one carrier over another with the present revenue-based mechanism.

BellSouth also argues that a majority of billable transactions have involved wireless carriers, including primarily wireless intramodal ports, since wireless LNP commenced.[26] Even if true, the involvement of wireless carriers in the predominant percentage of billable transactions merely proves that the FCC's competitive policies are working, and that the presence of vibrant wireless competition and the threat of intermodal competition is serving the public interest, not that the current revenue-based recovery mechanism should be changed. Indeed, as explained above, implementation of a usage-based recovery mechanism would merely harm competition and create disincentives for carriers to engage in billable transactions that serve the public interest. Moreover, changing the structure now would be grossly inequitable to wireless carriers, which have been contributing based on revenues for six years despite having participated

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26 *See, e.g.,* BellSouth Petition at 20-21.

in LNP for only two years and which, unlike the ILECs, are still in the initial cost recovery phase for recovering their direct costs of implementing LNP.

In any event, escalating LNP shared costs and pooling costs are not adversely affecting BellSouth's ability to compete vis-à-vis other carriers. BellSouth provides no evidence to support its claim that it is having difficulties competing.[27] Nor does BellSouth provide evidence to support its claim that the current methodology is negatively affecting its ability to earn a normal return.[28] To the contrary, BellSouth, like most of the other ILECs, is earning very healthy returns.[29] Indeed, BellSouth itself admits in the Petition that billable transaction fees are minimal and do not constitute a barrier to competition.[30]

In short, like all consumers and telecommunications service providers, including ILECs, BellSouth benefits from its contribution to shared LNP and pooling costs in the form of increased competition, accurate data in the NPAC to ensure proper routing and billing, and better efficiency with respect to numbering optimization, which ensures that numbers will be available for BellSouth and all carriers to use as necessary. BellSouth has a larger customer base, and therefore the demands it faces for ensuring accurate call routing and billing, as well as the benefits it enjoys, are as great, or greater, than any other carrier in the market. Therefore, it is equitable that BellSouth, with its much higher market share, contributes in a manner that is proportional to the revenues it generates from that market.

27 *See, e.g., id.* at 28.

28 *See, e.g., id.*

29 *See Statistics of Communications Common Carriers*, Table 2.1 (2005) (noting BellSouth Telecommunications, Inc.'s total operating revenues of more than 16 billion dollars for 2004).

30 *See, e.g.,* BellSouth Petition at 30.

2. Consumers, rather than the new or old service providers, are the cost causer in porting transactions.

BellSouth incorrectly views the new service provider in a porting transaction as the "cost causer" that should bear all the costs of a porting transaction.[31] In reality, the consumer who elects to port his or her number, rather than the new or the old service provider, is the cost causer. However, requiring consumers who elect to port their numbers to bear directly the full cost of the port transaction would be fundamentally inconsistent with the Act and the Commission's rules and policies regarding portability because it would create disincentives for consumers to exercise their right to port. As such, the public interest is best served by retaining the current revenue-based recovery mechanism.

D. BellSouth's Other "Advantages" Do Not Warrant BellSouth's Proposed Change To The Present LNP Shared Costs Contribution Mechanism

As additional justification for adopting a usage-based mechanism, BellSouth argues that a usage-based mechanism is straightforward and easy to administer.[32] However, BellSouth fails to explain why the current revenue-based mechanism is not straightforward and easy to administer. In fact, nothing in the record suggests that Neustar, as the Local Number Portability Administrator and Pooling Administrator, is having, or has ever had, difficulties administering the present revenue-based mechanism. Moreover, it is far from clear that the administrative difficulties of creating carrier-specific usage accounts, billing based on carrier-specific usage, audits of accounts and resolving billing disputes would be any less burdensome than the current and well-

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[31] *See, e.g., id.* at 31-32.

[32] *See id.* at 33.

established revenue-based mechanism. Hence, it is uncertain how much it would cost NeuStar, and therefore the industry, to modify its billing systems, processes, and procedures to accommodate a usage-based cost recovery mechanism.

BellSouth also claims that another advantage to adopting a usage-based recovery mechanism is that "all shared costs incurred by the industry will continue to be recovered."[33] This is hardly an advantage since, as BellSouth admits, all shared costs are being recovered today. Moreover, it is far from obvious that all shared costs would continue to be recovered if the Commission adopted a usage-based recovery mechanism. Specifically, billing disputes and bad debts are far more likely to lead to under-recovery under a usage-based recovery mechanism, which is not a concern under the current revenue-based recovery mechanism.

BellSouth's arguments fail to demonstrate any advantage for competition, any advantage for the public, any advantage for the administrator, or any advantage for the CLECs and other competing providers. BellSouth, and other incumbent providers like it, will be the only beneficiaries of BellSouth's proposed adoption of a usage-based methodology. Such a one-sided outcome defies the idea of competitive neutrality. Accordingly, the Commission should dismiss BellSouth's supposed advantages to adopting a usage-based mechanism.

II. A USAGE-BASED RECOVERY MECHANISM WOULD NOT ENCOURAGE EFFICIENT USE OF THE DATABASE

BellSouth attempts to justify its request to abandon the current revenue-based recovery mechanism in favor of a usage-based recovery mechanism upon alleged

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33 *Id.*

increases in efficiency with which carriers will use the NPAC.[34] In addition to the competitive and database accuracy harms that would result from implementation of a usage-based recovery mechanism, BellSouth's proposal would discourage ***all*** use of the database for billable transactions rather than encourage efficient use of the database. As the Commission correctly found when it adopted a revenue-based methodology instead of a usage-based methodology, some transactions serve the public interest and should be encouraged (*e.g.*, uploads and downloads that ensure the accuracy of the database and proper routing and billing of all pooled and ported telephone numbers). Accordingly, discouraging all billable transactions would not serve the public interest or increase the efficiency with which the database is used.

Rather than departing from the current revenue-based recovery mechanism, the Commission can and should reduce unnecessary costs associated with porting by improving the intermodal porting process. In T-Mobile's experience, over 50% of intermodal port requests must be submitted an average of 3 times (*i.e.*, the new service provider must submit one or more "supplemental" requests after submitting the original request) before the request is accepted, processed and completed, and in some cases a corrective modification to the NPAC activation is required. Each "supplemental" request or avoidable modification to the NPAC unnecessarily increases the costs associated with portability, which is contrary to the public interest. Accordingly, by improving the intermodal porting process, the Commission could reduce the supplemental requests and corrective NPAC modifications associated with intermodal porting by almost 40%, which would represent a significant reduction in costs associated with portability, particularly in

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[34] *See, e.g., id.* at 32-33.

light of the fact that, as BellSouth points out, the majority of the ports in which the ILECs engage involve wireless carriers. Therefore, T-Mobile urges the Commission to adopt the specific recommendations for improving the intermodal porting process that T-Mobile has proposed.[35]

To the extent that the Commission deems it necessary to improve the efficiency with which carriers use the database after improving the intermodal portability process, the agency could initiate a rulemaking proceeding to reexamine the classification of each type of billable transaction as a shared cost or a direct carrier cost. Some carriers use the database in a manner that arguably is more of a direct cost than a shared cost, such as using the database to make changes in their networks (*e.g.*, switch replacement – using porting to move NXX codes from an old switch to a new switch – or load balancing – using porting to move NXX codes from one switch to another in order to balance out the load so that calls are not blocked). To the extent that the a particular use of the database more closely resembles a direct carrier cost rather than a shared cost, and thus that there is no reason why that particular usage does not benefit the industry as a whole by facilitating competition or ensuring accuracy of the database, the Commission could

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35 *See* Comments of T-Mobile USA, Inc., *Telephone Number Portability*, CC Docket No. 95-116 at 5-7 (filed Jan. 20, 2004) (commenting in response to the *Memorandum Opinion and Order and Further Notice of Proposed Rulemaking* released by the Commission on Nov. 10, 2003) and Reply Comments of T-Mobile USA, Inc. (filed Feb. 4, 2004); Comments of T-Mobile USA, Inc., *Telephone Number Portability*, CC Docket No. 95-116 (filed Nov. 17, 2004) (commenting in response to the *Second Further Notice of Proposed Rulemaking* released by the Commission on Sept. 16, 2004) and Reply Comments of T-Mobile USA, Inc. (filed Dec. 17, 2004); and Letter from Todd D. Daubert, Counsel for T-Mobile USA, Inc., to Marlene H. Dortch, Secretary, FCC, CC Docket No. 95-116, Attach. (filed April 19, 2005) ("T-Mobile April 19, 2005 *Ex Parte*") and Letter from Todd D. Daubert, Counsel for T-Mobile USA, Inc., to Marlene H. Dortch, Secretary, FCC, CC Docket No. 95-116, Attach. (filed March 31, 2005) ("T-Mobile March 31, 2005 *Ex Parte*"). A copy of each of these documents, with duplicative attachments omitted, is attached hereto.

consider requiring carriers to pay for those specific costs on a usage basis. Specifically, targeted usage charges could avoid the types of harms that would result from BellSouth's proposal. Before the Commission undertakes such a comprehensive reexamination of individual transactions, however, T-Mobile respectfully submits that the Commission should first implement the improvements to the intermodal porting process that T-Mobile has recommended and determine whether further increases in efficiency are warranted. In any event, BellSouth's Petition should be denied.

III. CONCLUSION

For the reasons described above, T-Mobile respectfully requests that the Commission dismiss BellSouth's Petition and maintain the current revenue-based mechanism for determining carrier contribution to the shared costs of LNP and pooling. Rather than abandoning the current recovery mechanism, the Commission should improve the efficiency in which the NPAC is used by improving intermodal portability.

Respectfully submitted,

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